IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:25.9.2007

CORAM:

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

W.P.NO.15572 OF 1994
and W.M.P.Nos.9635 of 1995 and 20585 of 1998

Mr.M.Kuppuswamy, M.A.B.Ed.,
Assistant
Municipal Middle School
Karai, Ranipet,
North Arcot Ambedkar District ..Petitioner

vs

1.The Chief Educational Officer
Vellore, North Arcot Ambedkar
District

2.Mrs.G.Prema,
Headmistress,
Municipal Middle School
Srinivasan Pettai, Ranipet,
North Arcot Ambedkar District ..Respondents

Writ Petition filed is filed under Article 226 of the Constitution of India for issue of a writ of Certiorarified Mandamus to call for the records in proceedings Na.Ka.No.19132/E6/94, dated 21.7.94 on the file of the Chief Educational Officer, North Arcot Ambedkar District at Vellore and quash the same and direct the 1st respondent to promote the petitioner as Headmaster, Municipality, North Arcot Ambedkar District.
For petitioner : Mrs.J.Sudha
for
Mr.R.Subramaniam

For respondents : Mr.M.Dhandapani, A.G.P.
(for R1)
No appearance for R2

ORDER

The petitioner is aggrieved against the proceedings of the first respondent in Na.Ka.No.19132/E6/94 dated 21.7.94 in and by which the second respondent was promoted as Headmistress of Municipal Middle School, Srinivasanpet, Ranipet Municipality.

2. According to the petitioner as per G.O.Ms.No.1297, Education Department dated 21.7.1979

whenever a vacancy arises in the post of Headmaster of Middle School due to death, retirement, resignation etc such vacancy should be filled up by the senior most from among the persons working as Secondary Grade Teachers, that the petitioner joined as a Secondary Grade Assistant in the year 1970 while the second respondent joined as Secondary Grade Assistant only in the year 1972 and therefore, the promotion given to the second respondent superseding the claims of the petitioner by the order impugned in the writ petition is liable to be set aside.

3. The petitioner also placed G.O.Ms.No.1297 dated 21.7.79. In the said G.O., in paragraph 3(b)(i) it is stated as under:

"(b)(i) when permanent Vacancies arise in future in post of Headmasters of middle Schools (Due to death, retirement, resignation etc) such vacancies shall be filled up by the senior most among. Persons working as secondary Grade teachers or in other cadres of trained teachers but qualified for B.Ed./Tamil Pandit."

Therefore, what is to be seen is from amongst three categories, that is, Secondary Grade Teachers, other trained teachers with B.Ed., qualification or Tamil Pandit who was the senior most to be considered for filling up of any permanent vacancy to the post of Headmaster. It is stated that the post of Headmaster of a Middle School at Srinivasanpet, arose on 31.5.1994 due to retirement of one Thiru Arumugham who was holding the post. The petitioner is stated to have made a representation dated 9.5.1994 to consider him for the said post on the ground that he was the senior most Secondary Grade Assistant. However, by the impugned order dated 21.7.1994 the second respondent was appointed as the Headmistress. Therefore, the question that arises for consideration is from among the petitioner and the second respondent who was eligible to be considered for the post of Headmaster. In paragraph 3 of the petitioner's affidavit the petitioner has furnished the details about the date of joining of the petitioner and the second respondent as well as the qualifications acquired by them at different point of time. To appreciate the position better, the said part of the affidavit can be extracted which reads as under"

'3. I state that I joined as Secondary Grade Assistant in 1970. The 2nd Respondent joined as Secondary Grade Assistant in 1972. I qualified as M.A.B.Ed. in 1980. The 2nd Respondent qualified as M.A.B.Ed. only in 1982. The 2nd Respondent was qualified for appointment as Tamil Pandit in 1978."

It is true that the petitioner is said to have joined as Secondary Grade Assistant in 1970 while the second respondent joined in the year 1972. But the second respondent qualified herself as Tamil Pandit in the year 1978. When the above qualifications and the stipulations contained in G.O.Ms.No.1297 if applied, since the petitioner had joined as early as in the year 1970 he becomes the senior most Secondary Grade Assistant and thereby he was entitled to be considered over the claims of the second respondent who was admittedly junior to the petitioner in the category of Senior Grade Assistant. As far as acquiring B.Ed., qualification is concerned, while the petitioner acquired the said qualification in the year 1980, the second respondent acquired the same only in the year 1982. Since the petitioner was the senior most Secondary Grade Assistant he was entitled to be considered for any permanent vacancy arising which had to be filled up by applying G.O.Ms.No.1297 dated 21.7.1979. Viewed in that respect, certainly the status of the second respondent as Tamil Pandit which status she acquired in the year 1978 cannot be construed as conferring any better benefit on the second respondent for being preferred over the claims of the petitioner. In such circumstances, the impugned order of the 1st respondent in not considering the claims of the petitioner as senior most Secondary Grade Assistant, therefore calls for interference.

4. Be that as it may, in this very writ petition certain other orders came to be passed in

W.M.P.Nos.20584/1998 and 9634/1995 on 14.12.1998 directing the 1st respondent to promote the petitioner as the Headmaster of Municipal Middle School, Srinivasanpet, Ranipet, with effect from 21.12.1998. However, subsequently, a Review Application came to be filed in R.A.No.51/99 by one Thiru S.Murugesan. In that Review Application, the following order came to be passed on 30.4.99.

"I had on 14.12.1998 passed an order in the W.M.P.Nos.20584 of 1998 and 9634 of 1995 following the order passed by Raju.J as the learned Judge then was in W.P.Nos.13529 and 13530 of 1990 dated 3.7.1992 directing the
first respondent to promote the petitioner in the writ petition as Headmaster, Municipal Middle School, Srinivasanpet, Ranipet Municipality with effect from 21.12.1998. At that time it was not brought to my notice that the applicant in Review Application 51 of 1999 was already holding the post of Headmaster of the said school. Now that it has been brought to my notice. I am obliged to review my order and direct that the order dated 14.12.1998 be cancelled and the review applicant Thiru S.Murugesan is to act as Headmaster until further orders. The Review Application will stand allowed. The main writ petition itself is to be posted in the first week of August 1999."

In the light of the above said orders while allowing this writ petition and setting aside the order impugned in the writ petition it is made clear that whatever rights that accrue to the petitioner by allowing this writ petition shall always be subject to the claims of the said Review Applicant in Review Application No.51/99. Connected pending WMPs are closed. No costs.

index:yes/no 25.9.2007
internet:yes/no
sal
To
1.The Chief Educational Officer
Vellore, North Arcot Ambedkar
District
2.Mrs.G.Prema,
Headmistress,
Municipal Middle School
Srinivasan Pettai, Ranipet,
North Arcot Ambedkar District

F.M.IBRAHIM KALIFULLA,J.

(sal)

W.P.NO.15572 of 1994

25.9.2007